

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

_____)	
CYNTHIA BOSS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-cv-00042-M-LDA
)	
FEDERAL HOUSING FINANCE)	
AGENCY, FEDERAL NATIONAL)	
MORTGAGE ASSOCIATION, and)	
SANTANDER BANK, N.A.,)	
)	
Defendants.)	
_____)	

ANSWER AND AFFIRMATIVE DEFENSES OF SANTANDER BANK, N.A.

For its Answer and Affirmative Defenses to the Complaint of Cynthia Boss (the “Complaint”), Defendant Santander Bank, N.A. (“Santander”) states as follows:

Introduction

1. Paragraph 1 of the Complaint contains introductory statements and legal conclusions to which no response is required. The extent a response is required, Santander denies any wrongdoing in connection with the referenced foreclosure and denies that Plaintiff is entitled to any relief whatsoever from Santander. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. Paragraph 2 of the Complaint asserts a legal conclusion to which no response is required.

3. Paragraph 3 of the Complaint asserts a legal conclusion to which no response is required.

4. Paragraph 4 of the Complaint asserts a legal conclusion to which no response is required.

THE PARTIES

5. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 5 of the Complaint.

6. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 6 of the Complaint.

7. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 7 of the Complaint.

8. Santander admits that it is a national banking association organized under the laws of the United States with its main office, as set forth in its articles of association, located in the State of Delaware. Santander denies the remaining allegations contained in paragraph 10 of the Complaint.

GENERAL FACTUAL ALLEGATIONS

9. The referenced statute ("HERA") speaks for itself. To the extent Plaintiff attempts to characterize the text, intent, or meaning of HERA, the allegations contained in paragraph 9 of the Complaint are denied. In all other respects, Santander lacks knowledge or

information sufficient to form a belief about the truth of the allegations contained in paragraph 9 of the Complaint.

10. HERA speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 10 of the Complaint.

11. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 11 of the Complaint.

12. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 12 of the Complaint.

13. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 13 of the Complaint.

14. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 14 of the Complaint.

15. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 15 of the Complaint.

16. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 16 of the Complaint.

17. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 17 of the Complaint.

18. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 18 of the Complaint.

19. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 19 of the Complaint.

20. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 20 of the Complaint.

21. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 21 of the Complaint.

22. HERA speaks for itself. To the extent Plaintiff attempts to characterize the text, intent, or meaning of HERA, the allegations contained in paragraph 22 of the Complaint are denied. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 22 of the Complaint.

23. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 23 of the Complaint.

24. The referenced exhibits speak for themselves. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 24 of the Complaint.

25. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 25 of the Complaint.

26. The referenced exhibits speak for themselves. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 26 of the Complaint.

27. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 27 of the Complaint.

28. The referenced exhibits speak for themselves. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 28 of the Complaint.

29. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 29 of the Complaint.

30. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 30 of the Complaint.

31. Paragraph 31 of the Complaint asserts a legal conclusion to which no response is required. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 31 of the Complaint.

32. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 32 of the Complaint.

33. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 33 of the Complaint.

34. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 34 of the Complaint.

35. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 35 of the Complaint.

36. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 36 of the Complaint.

37. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 37 of the Complaint.

38. The referenced exhibit speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 38 of the Complaint.

39. The referenced exhibit speaks for itself. Further, paragraph 39 of the Complaint asserts a legal conclusion to which no response is required. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 39 of the Complaint.

40. The referenced deed speaks for itself. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 40 of the Complaint.

41. The referenced exhibit speaks for itself.

42. The referenced exhibit speaks for itself.

43. The referenced exhibit speaks for itself.

44. The referenced exhibit speaks for itself. To the extent Plaintiff allege that the assignment was ineffective, Santander denies the allegations contained in paragraph 44 of the Complaint.

45. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 45 of the Complaint.

46. The referenced exhibit speaks for itself.

47. Insofar as the allegations contained in paragraph 47 concern Santander, they are denied. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 47 of the Complaint.

48. Insofar as the allegations contained in paragraph 48 concern Santander, they are denied. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 48 of the Complaint.

49. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint asserts legal conclusions to which no response is required. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 50 of the Complaint.

COUNT I – DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS

51. The foregoing paragraphs are incorporated herein by reference.

52. Paragraph 52 of the Complaint asserts legal conclusions to which no response is required. Insofar as the allegations contained in paragraph 52 of the Complaint concern Santander, they are denied. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 52 of the Complaint.

53. The referenced statute speaks for itself. In all other respects, Santander denies the allegations contained in paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint asserts legal conclusions to which no response is required. In all other respects, Santander denies the allegations contained in paragraph 54 of the Complaint.

55. Paragraph 55 of the Complaint asserts legal conclusions to which no response is required. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 55 of the Complaint.

56. Paragraph 56 of the Complaint asserts legal conclusions to which no response is required. In all other respects, Santander denies the allegations contained in paragraph 56 of the Complaint.

57. Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint asserts legal conclusions to which no response is required. In all other respects, Santander lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 58 of the Complaint.

59. Paragraph 59 of the Complaint asserts legal conclusions to which no response is required. In all other respects, Santander denies the allegations contained in paragraph 59 of the Complaint.

60. Denied.

61. Denied.

RESPONSE TO PRAYERS FOR RELIEF

Santander denies that Plaintiff is entitled to the relief requested.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim against Santander upon which relief can be granted.
2. The Court lacks subject matter jurisdiction over the Plaintiff's Complaint because it is moot.
3. The Court lacks subject matter jurisdiction over the Plaintiff's Complaint pursuant to 12 U.S.C. § 4617(f).
4. Plaintiff is estopped from challenging the acceleration of their mortgage loan and foreclosure of their mortgage.
5. Plaintiff's damages are barred by Plaintiff's failure to mitigate.
6. Plaintiff's claims are barred by the mortgage loan contracts, which Plaintiff breached, and which expressly granted to the mortgagee and/or its assigns the statutory power of sale.
7. Plaintiff's claims are barred by the doctrine of unclean hands and/or *in pari delicto*.
8. Defendants are entitled to set off damages for any and all amounts due and owing under the terms of the mortgage loan.
9. Plaintiff's claims are barred by the Housing and Economic Recovery Act of 2008.
10. Plaintiff's Complaint is barred by the doctrine of laches.

WHEREFORE, Santander Bank, N.A. respectfully requests that the Court enter judgment in its favor, and against the Plaintiff, with respect to Count I, award Santander Bank, N.A. its costs and attorneys' fees incurred in connection with this action, and award such other relief as the Court deems just and proper.

Respectfully submitted,
SANTANDER BANK, N.A.,
By its attorneys,

/s/ Matthew A. Kane
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Date: August 14, 2017

CERTIFICATE OF SERVICE

I, Matthew A. Kane, hereby certify that this document has been filed electronically and is available for viewing and downloading from the Court's ECF system. A true copy of this document will be sent electronically to the registered participants, as identified on the Notice of Electronic Filing, and paper copies will be sent to non-registered participants, on August 14, 2017.

/s/ Matthew A. Kane
Matthew A. Kane